

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, DC**

STB DOCKET NO. AB-878

**CITY OF PEORIA AND THE VILLAGE OF PEORIA HEIGHTS, IL—ADVERSE
DISCONTINUANCE—PIONEER INDUSTRIAL RAILWAY COMPANY**

**SUPPLEMENT TO
PETITION TO REOPEN FOR IMMEDIATE MODIFICATION OR CLARIFICATION**

**Daniel A. LaKemper
General Counsel
Pioneer Industrial Railway Co.
1318 S. Johanson Road
Peoria, IL 61607
Phone: (309) 697-1400**

**William A. Mullins
David C. Reeves
Baker & Miller PLLC
2401 Pennsylvania Ave., N.W.
Suite 300
Washington, DC 20037
Phone: (202) 663-7820
Fax: (202) 663-7849**

August 23, 2005

**Attorneys for Pioneer Industrial
Railway Co.**

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Comes now Pioneer Industrial Railway Company (“PIRY”), Petitioner in this proceeding, and supplements its Petition to Reopen for Immediate Modification or Clarification, and submits to the Surface Transportation Board (“Board”) a copy (attached hereto as “Exhibit 4”) of an article that appeared today in the *Peoria Journal Star*, in which the City of Peoria makes it abundantly clear that it has no intention of allowing this Board, or the legal process in State Court, to delay the destruction of the Kellar Branch, and the conversion of the Kellar Branch right of way into a trail.

PIRY respectfully requests that the Board act promptly to reopen the Decision and clearly specify that the Cities may not remove the existing Line without establishing in court that PIRY’s agreement has expired and without CIRY obtaining specific Board approval to discontinue operation on the Kellar Branch. CIRY is a common carrier. It may not, therefore, consistent with 49 U.S.C. §10903(a), abandon or discontinue the operation over “any part of its railroad lines,” absent an application to this Board.

The Cities have attempted to evade the law through their “change of operator” ploy. PIRY respectfully submits that the Board’s exemption procedures were not established for the purpose of giving trail enthusiasts a way to circumvent the requirements of §10903.

Respectfully submitted,



Daniel A. LaKemper
General Counsel
Pioneer Industrial Railway Co.
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David C. Reeves
Baker & Miller PLLC
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Attorneys for Pioneer Industrial Railway Co.

CERTIFICATE OF SERVICE

I, Daniel A. LaKemper, hereby certify that on this 23rd day of August, 2005, copies of the foregoing Supplement to Petition to Reopen for Immediate Modification or Clarification have been served by first class mail, postage prepaid, upon all parties of record to this proceeding identified on the Surface Transportation Board's website.

A handwritten signature in black ink, appearing to read "Daniel A. LaKemper", written in a cursive style.

Daniel A. LaKemper
Attorney for Pioneer Industrial Railway Co.

IN TOUCH

► CITY DESK 696-3114
► STATE DESK 696-3153
E-mail: news@jstar.com

Local & State

SECTION **B**

TUESDAY
AUGUST 23, 2005
JOURNAL STAR

Pioneer sues Peoria over Kellar Branch

Company argues it still controls the tracks

BY MATT BUEDEL
OF THE JOURNAL STAR

PEORIA — Pioneer Railcorp has filed suit against the city and with the federal Surface Transportation Board in an apparent attempt to prevent the Kellar Branch from being uprooted and converted into a hiking trail.

A delay in the extension of the Rock Island Trail, however, does not appear imminent, City Manager Randy Oliver said Monday.

The lawsuit and petition to the STB don't "mean anything at this point," Oliver said. "The city is moving forward."

Pioneer Railcorp's lawsuit in the 13th Judicial Circuit in LaSalle County asks the court to rule that Pioneer has a permanent right to operate on the track and declare the city's contract with Central Illinois Railway invalid, in addition to awarding at least \$50,000.

In the petition to the STB, Pioneer Railcorp requests the board to immediately prohibit the city and Peoria Park District from destroying the track until the state court rules whether

Pioneer Railcorp's contract with the city is still valid and has control of the tracks.

The STB ordered the short-line operator off the tracks last week after ruling in the city's favor.

The city had petitioned the board, which has exclusive domain over all railroads, to replace Pioneer Railcorp with a different operator.

That operator, Granville-based Central Illinois Railway, will service businesses that require rail service along the Kellar Branch until a contractor finishes building a rail spur that will connect those

businesses to the Union Pacific Railroad to the west.

Once the spur is complete this fall, Central Illinois Railway will operate on that track and the Kellar Branch will be uprooted and replaced with a hiking trail, linking the Rock Island Trail from the north to the riverfront via the Kellar Branch corridor.

The city contends that Pioneer Railcorp's right to use the Kellar Branch expired in July 2004, while Pioneer Railcorp's filings argue the contract was open-ended.

Bonnie Noble, executive director of the park district, said the district still plans to award a contract for some track demolition and trail construction at a board meeting Wednesday, but the work could not begin until the city's contractor finishes spur construction in the fall.

The park district could lose a \$400,000 grant from the Illinois Department of Natural Resources if the work is not done this year, Noble added.

"I think we just keep moving forward with what we're doing," she said. "We can't afford not to do it."